

APPEAL NO. 040166  
FILED FEBRUARY 25, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 30, 2003. The hearing officer determined that the appellant's (claimant) compensable (right shoulder) injury of \_\_\_\_\_, does not extend to nor include an injury to his left shoulder.

The claimant appealed on sufficiency of the evidence grounds, contending that his testimony, documentary evidence, and the mechanism of the injury prove that the compensable injury includes the left shoulder. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to his right shoulder on \_\_\_\_\_. The claimant testified how an accident at work on an oil rig threw, or slammed him against the "draw works" (a metal box). It is undisputed that the claimant sustained a right shoulder dislocation. The claimant was eventually referred to Dr. E. Dr. E's records begin on December 11, 2001, but at that time only reference the right shoulder. In evidence are physical therapy notes from February through June 2002, which only references the right shoulder. A designated doctor, in a report dated July 10, 2002, only references the right shoulder. The first mention of a left shoulder complaint is a progress note dated October 29, 2002, which states "Now L shoulder pops & locks locks up & down all night." The hearing officer concluded that the medical evidence showed that the claimant's left shoulder injury "probably occurred between July 9 and October 29, 2002." The claimant's contention at the hearing was that he has continually complained of left shoulder pain and that "he has no control over what other people write into reports."

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We did not find it so in this case.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE COMPANY OF WAUSAU** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Panel  
Manager/Judge

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Margaret L. Turner  
Appeals Judge